"In filling in the answers in a proposal form an insurance agent, except in the case of industrial assurance, is normally regarded as the agent for the proposer, at the request, express or implied, of the latter."

In *Newsholme Bros.* v. *Road Transport and General Insurance Co. Ltd.*,[4] in answer to three of the questions set out in the proposal form, the agent wrote those answers on the form incorrectly either because he had misunderstood or forgotten what was told to him or intentionally to earn a commission which otherwise he might not receive. It was held by the Court of Appeal that the agent was not authorised by the company to fill in the proposal form and in doing so must be regarded as the agent of the proposer. In *Biggar* v. *Rock Life Assurance Company*,[5] a policy of insurance against accidental injury was effected with an insurance company through their local agent. The proposal form was filled up by the agent, many of the answers filled in by him being false in material respects; the false answers were inserted without the knowledge or authority of the applicant, who signed the proposal form without reading it. The proposal contained also a declaration that the statements in the proposal should form the basis of the policy. It was held, *inter alia*, that in filling in the false particulars the agent was acting, not as the agent of the insurance company, but as the agent of the applicant.

There is ample evidence that the plaintiff in this case had left the question of effecting the insurance on his behalf entirely to other persons and in fact he expressly instructed his brother-in-law, PW2, who is a sub-agent of the Lim Keat Chye Agency, to effect the insurance on his behalf. In *MacGillivray's* Insurance Law, Fifth Edition, at page 976, paragraph 978 deals with such situation as follows: —

"If the assured employs an agent to effect an insurance for him the fraud or misrepresentation of the agent in or about effecting the insurance will invalidate the policy, notwithstanding that the false statements have been made without the assured's authority, or even contrary to his express instructions. The assured is also responsible for the non-disclosure by such agent of anything within the agent's knowledge, however obtained, which is material to the risk. It is no answer for the assured to say that he had instructed his agent to disclose the facts or that he (the assured) had no knowledge of the facts known to his agent."

From the evidence in this case, it is clear that the plaintiff had authorised PW2 to do such things as he thought fit to effect the insurance on his behalf. He had left the whole thing to PW2. PW2 had in turn communicated to the same effect to PW3, and PW3 to DW2. A legal relationship of principal and agent was thus created in respect of the proposal to effect the insurance in question between the plaintiff and PW2, and Lim Keat Chye (DW2) had authority by implication to sign the proposal form on behalf of the plaintiff. *Qui facit per alium facit per se.*

I have no alternative therefore but to dismiss the action with costs and make an order accordingly.

Action dismissed.

Solicitors: *Singh Bros.; Khoo & Sidhu.*

PUBLIC PROSECUTOR v. UNG AH LENG

[A.Cr.J. (Chang Min Tat J.) December 14, 1973]
[Penang — Criminal Appeal No. 66 of 1973]

Road Traffic Ordinance, 1958, ss. 74 and 79 — Riding a motor-cycle without a licence — Insurance policy held in respect of motor-cycle — Charge of riding motor-cycle without a policy of insurance in respect of third party risks — Sentence.

In this case the Public Prosecutor appealed against the sentence imposed on the respondent on a charge of riding a motor-cycle without a policy of insurance in respect of third party risks to which he had pleaded guilty. The respondent had been fined $20 and the appeal was on the ground of manifest inadequacy.

Held: (1) as the respondent did not hold a licence to drive the motor-cycle, he did not have a valid policy of insurance against third party risks as required by section 74 of the Road Traffic Ordinance;

(2) in the circumstances the fine would be increased to $50.

Cases referred to:-

(1) *Public Prosecutor* v. *Nasir* [1972] 2 M.L.J. 38.

(2) *Velusamy & Anor* v. *Public Prosecutor* [1974] 1 M.L.J. 15.

CRIMINAL APPEAL.

T. Selvanthiranathan (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Chang Min Tat J.: This was an appeal by the Deputy Public Prosecutor from the fine of $20 imposed by the learned magistrate in Penang on a charge of riding a motor-cycle without a policy of insurance in respect of third party risks, under section 74(1) and section 74(2) of the Road Traffic Ordinance No. 59 of 1958, to which the respondent had pleaded guilty. The appeal was on the ground of manifest inadequacy.

At the hearing of the appeal, my attention was drawn to the following facts: —

(1) The respondent held a provisional licence for motor-cycles valid until 2 April;

(2) he had passed the proficiency test on 10 February and his success was endorsed on the reverse of his provisional licence;

(3) he was therefore at any time thereafter entitled on application to a fully proficient licence;

(4) he however failed to take out such a licence;

(5) he also held a proficient car-driving licence valid until November 1973;

(6) the offence was committed on 20 April;

(7) he held an insurance policy in his own name in respect of the motor-cycle, the subject matter of the offence for the period 1 February 1973 to 31 January 1974, and

(8) at no time was this insurance policy cancelled by the insurers.

The respondent endeavoured to explain that he was advised by someone in the office of the R.I.M.V. Penang that his car driving licence carried with it an authority to ride his motor-cycle. He did not call this someone. In any event, the advice if given was clearly wrong. All licences state the types of vehicles permitted to be driven. Further, in respect of third party insurance, a motor-car insurance policy ordinarily excludes the riding of motor-cycles.

However, in view of the above facts, and in the light of the extended provisions of section 79 of the Road Traffic Ordinance, I indicated to the learned Deputy Public Prosecutor that if I was not satisfied that an offence was committed, I would dismiss his appeal and in revision, set aside the conviction, sentence and disqualification.

On 15 January 1968, it is now provided in section 79 of the Road Traffic Ordinance of 1958 that

"Where a certificate of insurance has been delivered under sub-section (4) of section 75 of this Ordinance to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters —

....

(j) the driver of the motor-vehicle at the time of the accident not holding a licence to drive or not holding a licence to drive the particular vehicle, or

(k) the motor vehicle being used for a purpose other than the purpose stated in the policy, shall, as respects such liabilities as are required to be covered by a policy under paragraph (b) of sub-section (1) of section 75 of this Ordinance, be of no effect."

There is a proviso to this section and its words seem to me to clarify the position further:

"Provided that nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the *discharge of that liability*...."

The learned Deputy Public Prosecutor however sought to maintain the conviction. He first relied on the case of *Public Prosecutor* v. *Nasir*,[1] where it was held that the failure to display "L" plates on a motor-cycle ridden by a provisional rider as required by rule 16(c) of the Motor Vehicles (Driving Licence) Rules 1959 was a breach of one of the conditions attached to his learner's licence and he was guilty also of driving without a valid third party insurance, despite the fact that he had a licence for the material time.

Nasir's case did not however refer to these amendments.

The learned Deputy Public Prosecutor then relied on the judgment in *Velusamy & Anor.* v. *Public Prosecutor*[2] in which it was held that the provision in section 79(k) which immediately follows section 79(j), *supra* and which was similarly a statutory enlargement did not operate to save, to use a broad expression, a pirate-taxi driver with only a third party insurance policy for private user, from a conviction under section 74(1) for driving without a valid third party insurance. It was therein held that

"All section 79 says is that this restriction in the policy shall have no effect only as regards the first appellant's (i.e. the driver's) civil liability towards third parties. In other words, notwithstanding this restriction, the insurer remains ultimately liable to compensate third parties injured by the assured, because (as made clear by the proviso) if the insurance company pays any sum to third parties by virtue of this section, then it may recover that sum from the assured. Section 79 is concerned only with civil liability; it does not affect the first appellant's criminal liability."

For a time I had thought that the test was the effective one of whether third parties would have their claims met, but recalling that it is basically a matter of interpretation, I accept with respect the judgment of Suffian F.J. (as he then was) in *Velusamy's* case. Persons injured by the driving of a vehicle are now, in terms of the proviso, "covered by the policy by virtue of this section," and not by the policy. The driver has not therefore a valid policy as required by section 74.

The appeal succeeds but having caused the poor respondent such considerable inconvenience, I do not think that I could impose on him a heavier fine than $50.

Appeal allowed.

PUBLIC PROSECUTOR v. MAHMUD

[A.Cr.J. (Ong Hock Sim F.J.) December 14, 1973]
[Penang — Criminal Appeal No. 74 of 1973]

Criminal Law and Procedure — Summary trial — Accused pleading guilty — Whether Magistrate can acquit accused on view that on the facts no offence is disclosed — Criminal Procedure Code, (S.S. Cap. 21), s. 183(g).

In this case the respondent had pleaded guity to a charge of driving a motor-car without due care and attention. After the prosecuting officer had given the brief facts of the case, the learned magistrate formed the view that "on the facts no offence is disclosed" and purporting to act under section 183(g) of the Criminal Procedure Code he acquitted the respondent. The Public Prosecutor appealed.

Held, allowing the appeal: (1) the facts, if admitted showed, that the respondent had failed to exercise the due care and attention which would have averted the incident of the car knocking a telephone post and therefore the learned Magistrate was wrong in acquitting the respondent;

(2) it is not open to a magistrate to acquit an accused person without hearing evidence. The order of acquittal should be set aside and the respondent be re-summoned to answer to the charge as framed.

CRIMINAL APPEAL.

T. Selvanthiranathan (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Ong Hock Sim F.J.: The respondent was charged under section 36(1) of the Road Traffic Ordinance (No. 49 of 1958) for driving motor-car No. BN 4378 without due care and attention.

The respondent pleaded guilty and the prosecuting officer proceeded to give the brief facts which I now set out in full:

"On 9.6.73 at about 3.45 p.m. Defendant was driving motor-car BN 4378 along Jalan Ara Kuda, 16½ milestone and proceeding towards Kulim. While Defendant was negotiating a sharp bend, the said car went to the left of the road and knocked into a telephone post. Damage to the post was estimated at 99.71 cts."

The learned magistrate thereupon formed the view "on the facts no offence is disclosed" and purporting to act under section 183(g) of the Criminal Procedure Code acquitted the respondent. This section reads:

"183(g) Nothing in paragraph (f) shall be deemed to prevent the court from acquitting the accused at any previous stage of the case if, for reasons to be recorded by the court, it considers the charge to be groundless;"

As is commented by *Mallal* at page 270 of his Criminal Procedure (4th Edn.) on Singapore section 172(g) which is in *pari materia* with our section 183(g), "a magistrate can avail himself of his powers under this paragraph... where all the facts which the pro-